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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,106	04/25/2001	David Robert Dudek	TS9244 (US)	1059

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EXAMINER

TREMBLAY, MARK STEPHEN

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 07/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/843,106

Applicant(s)

DUDEK ET AL.

Examiner

Mark Tremblay

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: .

Serial Number: 09/843,106

Paper #7, Page 2

Applicant: Dudek et al.

Filing date: 4/25/2001

Claim Rejections - 35 USC § 112

Claims 1-8, 10, and 20-22 are rejected under 35 U.S.C. § 112, second paragraph, as being
5 indefinite for failing to particularly point out and distinctly claim the subject matter which
Applicant regards as the invention.

The claims use the term "and/or". "/" lacks a definition. It is not clear what combination
Applicant contemplates.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the
basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or
15 on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United
States before the invention thereof by the applicant for patent, or on an international application by another who
has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention
20 thereof by the applicant for patent.

Claims 1-4, 8-15, and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by
U.S. Patent #4,236,559 to Archbold ("Archbold" hereinafter). Archbold discloses a reusable
container, which comprises therein one or more electronically and/or optically readable
25 information means.

Re claim 12, it is taught in the disclosure that the ID on bag is viewable by a bus driver,
who can read the optical information (inherent in the disclosure of a "bus driver" who must also
be able to read road signs and pass a driver's test), store it, and is capable of being interrogated to
extract and optionally process the information. Applicant's broadly recited claims do not preclude
30 this interpretation.

Claims 1-4, 8-15, and 19-21 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent #6,092,731 to Smith ("Smith" hereinafter). Smith discloses a reusable container (figs. 8, 9), which comprises therein one or more electronically and/or optically readable information means.

5 Re claim 4, Figure 8 shows a fold along the side of the container.

Claims 1, 8-12, 17, 19-20 and 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent #4,809,342 to Kappner ("Kappner" hereinafter). Kappner discloses a reusable container 11, which comprises therein one or more electronically and/or optically
10 readable information means (see figures 3-23).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

15 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20 This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly
25 owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

30 Claims 1-21, are rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent #5,067,636 to Pfeiffer et al. ("Pfeiffer" hereinafter) in view of U.S. Patent #4,809,342 to Kappner ("Kappner" hereinafter). Pfeiffer discloses a reusable container with one or more fill apertures and one or more dispense apertures, the fill aperture being remotely positioned on the container in

relation to the dispense aperture. Pfeiffer does not disclose any means of identifying the container or its contents. Kappner discloses a means for identifying a refillable container and its contents for refilling and tracking purposes. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the container taught by Pfeiffer with the system for filling and tracking reusable containers as taught by Kappner because this would allow the container taught by Pfeiffer to be automatically identified and tracked, avoiding monotonous manual tasks as taught by Kappner.

Re claims 4-5 and 15-16, neither reference expressly teaches a folded side wall or an expandable elastomeric material. Official Notice is taken that folded side walls and expandable elastomeric materials is old and well known in the container art. See In Re Malcolm 1942 C.D.589:543 O.G. 440. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide embodiments of the combined teachings with folded side walls because this would allow the container to expand and contract in a regular pattern, as required, and allow for the convenient storage of stock for making the container walls. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the collapsible portion taught by Pfeiffer of an elastomeric material because these materials are known to be tough and resilient, and the equivalent of e.g. plastic materials.

Claims 5 and 16, are rejected under 35 U.S.C. § 103 as being unpatentable over Smith. Smith discloses the features of the invention as described above, and further discloses that a variety of materials can be used to make the bag, but does not disclose an elastomeric material. Elastomeric materials are old and well known in the art. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the bag taught by Smith using an elastomeric material, because these materials can expand and contract on the basis of the contents placed in them, allowing them to use less space when not completely filled, and more space as necessary.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U. S. Patent #4,193,540 to Dougados et al. is cited for showing another reusable container system.

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Voice

10 Inquiries for the Examiner should be directed to Mark Tremblay at (703) 305-5176. The Examiner's regular office hours are 10:30 am to 7:00 pm EST Monday to Friday. Voice mail is available. If Applicant has trouble contacting the Examiner, the Supervisory Patent Examiner, Michael Lee, can be reached on (703) 305-3503. Technical questions and comments concerning PTO procedures may be directed to the Patent Assistance Center hotline at 1-800-786-9199 or (703) 308-4357.

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MARK TREMBLAY
PRIMARY EXAMINER

June 29, 2002